

**LISTING OF OPINIONS
ISSUED BY THE ATTORNEY GENERAL
STATE OF HAWAII**

List No. 45 – Opinion
Nos. 03-1 to 03-6

Opinion No.
(Date issued)

DIGEST

03-1
(Feb. 7, 2003)

School vouchers. In *Zelman v. Simmons-Harris*, -- U.S. --, 122 S. Ct. 2460 (2002), the U.S. Supreme Court held that the Ohio school voucher program did not violate the Establishment Clause of the U.S. Constitution, which prevents a state from enacting laws to advance or inhibit religion. *Zelman* is inapposite in Hawaii because a Hawaii school voucher program would be precluded under Art. X, section 1, of the Hawaii Constitution and not the Establishment Clause of the U.S. Constitution. Considering the Hawaii Supreme Court's previous interpretation of Art. X, section 1, in *Spears v. Honda*, 51 Haw. 1, 449 P.2d 130 (1968), which addressed the constitutionality of a statute requiring state-subsidized bus transportation for all school children, including sectarian and private school students, a school voucher program would violate the Hawaii Constitution.

03-2
(Mar. 28, 2003)

Executive restrictions on appropriations and lapses. There appears to be no reason why the executive branch cannot exercise its authority under part II of chapter 37, HRS, to reduce allotments for the fiscal year in progress. It would be improper for the biennial budget for fiscal biennium 2003-2005 to incorporate as revenues the proposed restrictions for FY 2002-2003 unless those restrictions were reflected as reduced appropriations in the budget adopted legislatively for FY 2002-2003. Under section 37-65, HRS, among the responsibilities of the governor are to formulate a proposed six-year state program and financial plan and a proposed state budget. The six-year program and financial plan and budget are planning documents and require the executive to estimate costs and resources. Using historical data to make estimates for a future fiscal period is an acceptable planning tool.

03-3
(Apr. 11, 2003)

Legal title to biogenetic resources from public lands. The State holds legal title to biogenetic resources gathered from public lands, including ceded lands, if it reserved title to said resources when it allowed third persons to remove natural resources from which the biogenetic resources were extracted, or it transferred title to the land from which the biogenetic resources came. The scope of the University of Hawaii's authority to sell or transfer biogenetic resources from ceded lands depends upon how it acquired the ceded land from which the resource originated. As a result of *OHA v. State*, 96 Haw. 388 (2001), the Legislature must again determine which income from public land trust lands are to go to the Office of Hawaiian Affairs (OHA). Until the Legislature re-establishes a funding mechanism for OHA, Executive Order No. 03-03 is the only mechanism for transferring receipts from the use of ceded lands to OHA. Receipts from biogenetic resources do not qualify for transfer under the order.

03-4
(May 30, 2003)

Ceded land receipts to OHA without legislative appropriation. Receipts derived from ceded lands apportioned for native Hawaiians pursuant to the Hawaii Constitution, Art. XII, section 6, and section 10-13.5, HRS (1985), may be transmitted directly to the Office of Hawaiian Affairs (OHA) by the agencies that collect them, without legislative appropriation, for three discrete reasons. The Constitution prescribes a process separate and different from the appropriation process in Art. VII, section 5, of the Constitution for making ceded land receipts available to native Hawaiians. Second (and alternatively), native Hawaiians' share of ceded land receipts does not belong to the State, and thus is not "public money." Third (and alternatively), even if the receipts agencies collect for the use of ceded lands are "public money," the transfer of receipts to OHA does not constitute an "expenditure."

03-5
(Aug. 18, 2003)

Medical acupuncture. Medical acupuncture is not sufficiently distinct from traditional acupuncture so as to fall outside the scope of the practice of acupuncture, and physicians licensed by the Board of Medical Examiners cannot practice medical acupuncture absent licensure by the Board of Acupuncture.

03-6
(Aug. 22, 2003)

Three readings of a bill. The Hawaii Constitution, Art. III, section 15, provides, "No bill shall become law unless it shall pass three readings in each house on separate days." S.B. No. 1394, which became Act 172, SLH 2003, was validly and constitutionally enacted although it did not pass second reading in the Senate. It did pass three readings in the Senate on January 22, March 4, and May 1, 2003, the last being the third reading when the bill passed its final reading after the Senate reconsidered its disagreement with the House amendments. In addition, the Senate President and the Senate Clerk certified that the bill passed final reading in the Senate.